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Netherlands: draft article on delimitation between States
with opposite or adjacent coasts

1. Where the determination of sea areas under articles (territorial sea, continental shelf, economic zone) by adjacent or opposite States up to the maximum limit would result in overlapping areas, the marine boundaries between those States shall be determined, by agreement between them, in accordance with equitable principles, taking into account all relevant circumstances.

2. Pending such agreement, neither of the States is entitled to establish its marine boundaries beyond the line, every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial sea of each State is measured.

3. If a State concerned refuses to enter into or to continue negotiations, or if no agreement is reached within after negotiations have been commenced, the procedure of conciliation of the type provided for in article 66 (b) and the annex of the 1969 Vienna Convention on the Law of Treaties may be set in motion by any of the States concerned.

4. If agreement is not reached within after the Conciliation Commission has made its final recommendations, the question of delimitation may be submitted, by any of the States concerned, to the procedure for the compulsory judicial settlement of disputes, provided for in article of the present Convention.

Explanatory note

1. In all cases where, under the new Convention on the Law of the Sea, coastal States would be entitled to extend some form of national jurisdiction over sea areas adjacent to their coasts up to a determined maximum limit, the question of delimitation as between adjacent or opposite coastal States may arise. The present proposal intends to lay down substantive guidelines for the solution of this question (para. 1) as well as procedures for their application (paras. 1, 3 and 4) and interim solutions to be applied pending the final determination of the delimitation lines (para. 2).

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English

2. The normal procedure of delimitation should be by agreement between the States concerned. Paragraph 1 of the present proposal embodies this principle and states guidelines for the negotiation of such agreement. Among the "equitable principles", there mentioned, figures the principle of equidistance, which, in many situations, will result in an equitable delimitation. There are, however, circumstances in which this would not be the case, and paragraph 1 accordingly prescribes the taking into account of all circumstances relevant for reaching an equitable solution.

3. Experience has learned that adjacent or opposite States may need the advice and help of an impartial body of persons in order to reach agreement on delimitation. Similar considerations have led the United Nations Conference on the Law of Treaties of 1969 to adopt a compulsory system of conciliation. Paragraph 3 of the present proposal suggests the application of that system - possibly with some adaptation as to the details - to the question of delimitation.

4. Under the Law of Treaties Convention the report of the Conciliation Commission, containing its final recommendations, is not binding and, consequently, this procedure cannot in itself produce a final solution of the delimitation question. Accordingly paragraph 4 of the present proposal suggests that, if negotiations and conciliation have finally failed to bring the parties to an agreement, judicial settlement of the dispute should take place, in conformity with the rules to be set out elsewhere in the new Convention on the Law of the Sea.

5. The final settlement of the question of delimitation may take a long time. It would seem essential that pending such settlement - through agreement or through judicial pronouncement - and without prejudice to such final solution, some interim rule should apply. In the first phase of the procedure only an automatically applicable rule could serve the purpose of restraining unilateral measures of the States concerned (para. 2 of the present proposal).

However, as soon as the second phase of the procedure - i.e. conciliation - has started, under paragraph 4 of the annex to the Vienna Convention on the Law of Treaties, the Conciliation Commission may at any time "draw the attention of the parties to the dispute to any measure which might facilitate an amicable settlement".